

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

Avantax Planning Partners, Inc.; and Avantax, Inc., Plaintiffs, vs. Michael Carignan; and Mariner, LLC, d/b/a Mariner Wealth Advisors, Defendants.	Court File No.: 24-1002 NOTICE OF REMOVAL
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TO: Plaintiffs above-named and their attorneys, Alenah A. Luthens and Jeremy D. Sosna, Littler Mendelson, P.C., 1300 IDS Center, 80 South 8th St., Minneapolis, MN 55402-2136.

Defendants Michael Carignan; and Mariner, LLC, d/b/a Mariner Wealth Advisors (“Defendants”), by and through their counsel, remove this action from the District Court of Dubuque County, Iowa, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. Removal is proper under the following grounds:

I. PREREQUISITES FOR REMOVAL

1. On January 5, 2024, Plaintiffs Avantax Planning Partners, Inc. and Avantax, Inc. (“Plaintiffs”) served Defendants’ counsel with its Petition, Case No. CV-CV-115314, pending in the State of Iowa, County of Dubuque (“State Court Action”) and Defendants’ accepted service on January 8, 2024. In accordance with 28 U.S.C. § 1446(a), a true and correct copy of Plaintiffs’ Petition is attached hereto as Exhibit A.

2. This Notice of Removal is filed with this Court within 30 days after service of the Petition on Defendants and thus is timely under 28 U.S.C. § 1446(b).

3. The United States District Court for the Northern District of Iowa embraces the District Court of Dubuque County, Iowa.

4. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be provided to Plaintiffs, and a copy of this Notice of Removal will be filed with the clerk of the District Court of Dubuque County, Iowa, to effect the removal of this civil action.

5. A Notice of Filing of Notice of Removal is being filed contemporaneously in the State Court Action pending in the District Court of Dubuque County, Iowa.

6. Pursuant to FRCP L.R. 81(a)(1), the undersigned states that as of the date of filing this Notice of Removal, no other documents other than the Petition, Application for Temporary Injunction, accompanying memorandum, and corresponding affidavit attached in Exhibit A have been filed in Dubuque County District Court.

7. Pursuant to FRCP L.R. 81(a)(2), the only matters that were pending in the Dubuque County District Court that require resolution were the issues raised in the Plaintiffs' Petition, which as of the time of filing this Notice of Removal have not yet been answered.

8. Attorneys Alenah A. Luthens and Jeremy D. Sosna represent Plaintiffs. Attorneys Alenah A. Luthens and Jeremy D. Sosna have appeared in this case in state court and their contact information, required pursuant to FRCP L.R. 81(a)(3) is:

Littler Mendelson, P.C.
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II. DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332

9. Removal of this action is proper under 28 U.S.C. §§ 1441(a) and (b) and 1332. This is a civil action brought in a state court of which the district courts of the United States have

original jurisdiction because there is complete diversity of citizenship between Plaintiffs and Defendants.

10. Diversity jurisdiction pursuant to 28 U.S.C. §1332 is proper, in that:

- a. Plaintiffs Avantax Planning Partners, Inc. and Avantax, Inc. are corporations of the state of Iowa, Exhibit A, Petition Paragraph No. 1;
- b. Defendant Michael Carignan is a citizen of the state of Georgia, Exhibit A, Petition Paragraph No. 4;
- c. Mariner, LLC, d/b/a Mariner Wealth Advisors is a limited liability company of the state of Kansas. Exhibit A, Petition, Paragraph No. 3. Mariner, LLC, d/b/a Mariner Wealth Advisors does not have any Iowa resident Members;
- a. The above-captioned action is a civil action in which the amount in controversy is likely to exceed the sum or value of \$75,000.00 exclusive of interest and costs. Plaintiffs' state court Petition does not allege the amount of damages sought; however, there exists a reasonable probability that the amount in controversy exceeds \$75,000.00 in that:
 - i. Plaintiffs' Petition alleges Carignan breached various employment agreements and has misappropriated, or will misappropriate, Plaintiffs' trade secrets and confidential information. See Exhibit A. The Petition goes on to seek damages for, inter alia, breach of Carignan's Agreement Ancillary and Proprietary Agreement, including immeasurable future economic loss for allegedly solicited clients; Mariner's tortious interference with Carignan's Avantax agreements; and violations of Iowa's Trade Secret Law, which Plaintiff alleges entitles it to statutory exemplary damages and attorneys' fees.
 - ii. In Paragraph Nos. 36-38, Plaintiffs' state:

Carignan worked with a team of professionals servicing relationships with CPA firm clients and servicing end-user clients located in Alabama, California, Colorado, Florida, Georgia, Idaho, Kansas, North Carolina, and Virginia. As part of this team, Avantax provided training and information to Carignan regarding, among other things: Avantax's business model and its relationship with CPA firm clients; Avantax's clients; Avantax's potential clients; various investment products; financial and accounting data; marketing

strategies; and access to Avantax's products and services to help Carignan better serve Avantax clients.

Except for Carignan's signing of the Agreement Ancillary and Proprietary Agreement, including his assent to the restrictive covenants set forth herein, Avantax would not have provided Carignan access to CPA firm clients with which it works, Avantax end-user clients, or the highly valuable resources to develop and grow Avantax's CPA firm clients.

Avantax assigned Carignan numerous existing CPA firm clients (which included the end-user clients of those CPA firm clients and provided him with support to recruit additional CPA firm clients to Avantax. Avantax also assigned Carignan to numerous new and developing CPA firm clients so that he could cultivate and grow relationships with those CPA firms and the current and prospective end-user clients. Carignan was only able to grow and maintain the business with the CPA firm clients due to the access Avantax provided him to its resources and proprietary and confidential information.

- iii. All of the damages and other relief sought in Plaintiffs' Petition are in amounts that cannot be ascertained precisely from the pleadings, but by a preponderance of evidence discernable from Plaintiffs' Petition, including the fact Plaintiffs are seeking exemplary damages and attorneys' fees under Iowa's Trade Secret Statute, when taken together, if proven, will exceed \$75,000.00;
- iv. Damages in breach of restrictive covenant, tortious interference, and misappropriation of trade secrets cases frequently exceed \$75,000.00, particularly when the Individual Defendant is accused of converting sixteen (16) client accounts in one week, as Plaintiff alleges in its Petition; and
- v. Plaintiffs seek an injunction prohibiting Carignan from contacting any Avantax client. The value of this injunctive relief alone exceeds \$75,000.00, and undoubtedly exceeds the amount in controversy threshold when considered alongside Plaintiffs' request for exemplary damages and attorneys' fees as described above.

11. Because this court has diversity jurisdiction over the above-captioned action pursuant to 28 U.S.C. §1332, removal to this court is proper pursuant to 28 U.S.C. §1441—“any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” As indicated above, this Court embraces the District Court of Dubuque County, Iowa.

12. By removing this action from the District Court of Dubuque County, Iowa, Defendants do not waive any defenses available to them.

13. By removing this action from the District Court of Dubuque County, Iowa, Defendants do not admit any of the allegations in Plaintiffs’ Petition.

WHEREFORE, Defendants respectfully request that all proceedings in the State Court Action cease, and that this action proceed in the United States District Court for the Northern District of Iowa as an action properly removed to it.

Dated: January 11, 2024

SIMMONS PERRINE MOYER BERGMAN PLC

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ATTORNEYS FOR DEFENDANTS
MICHAEL CARRIGAN AND MARINER
WEALTH ADVISORS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January, 2024, I electronically filed with the Clerk of Court the foregoing Notice of Removal using the CM-ECF system which will send notification of such filing to the following:

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Jeremy D. Sosna
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/s/ Kevin J. Visser
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